

§ 431.328

of an authorizing manufacturer or private labeler.

(e) *Submission instructions.* All reports and notices required by this section shall be sent by certified mail to: U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121, or by e-mail to the Department at: *certification.report@ee.doe.gov*. If submitting by e-mail, the compliance statement must be provided in PDF format (which shows the original signature).

[75 FR 10968, Mar. 9, 2010]

§ 431.328 Sampling.

For purposes of a certification of compliance, the determination that a basic model complies with the applicable energy conservation standard shall be based upon the testing and sampling procedures, and other applicable rating procedures, set forth in this part. For purposes of a certification of compliance, the determination that a basic model complies with the applicable design standard shall be based on the incorporation of specific design requirements specified in this part.

[75 FR 10968, Mar. 9, 2010]

§ 431.329 Enforcement.

Process for Metal Halide Lamp Ballasts. This section sets forth procedures DOE will follow in pursuing alleged non-compliance with an applicable energy conservation standard.

(a) *Performance standards.* (1) *Test notice.* Upon receiving information in writing concerning the energy performance of a particular covered equipment sold by a particular manufacturer or private labeler which indicates that the covered equipment may not be in compliance with the applicable energy standard, the Secretary may conduct a review of the test records. The Secretary may then conduct enforcement testing of that equipment under the DOE test procedure, a process that is initiated by means of a test notice addressed to the manufacturer or private labeler in accordance with the requirements outlined below.

(i) The test notice procedure will only be followed after the Secretary or his/her designated representative has

10 CFR Ch. II (1-1-11 Edition)

examined the underlying test data provided by the manufacturer, and after the manufacturer has been offered the opportunity to meet with the Department to verify compliance with the applicable energy conservation standard and/or water conservation standard. A representative designated by the Secretary must be permitted to observe any re-verification procedures undertaken according to this subpart, and to inspect the results of such re-verification.

(ii) The test notice will be signed by the Secretary or his/her designee and will be mailed or delivered by the Department to the plant manager or other responsible official designated by the manufacturer.

(iii) The test notice will specify the basic model to be selected for testing, the number of units to be tested, the method for selecting these units, the date and time at which testing is to begin, the date when testing is scheduled to be completed, and the facility at which testing will be conducted. The test notice may also provide for situations in which the selected basic model is unavailable for testing, and it may include alternative basic models.

(iv) The Secretary may require in the test notice that the manufacturer of covered equipment shall ship at its expense a reasonable number of units of each basic model specified in the test notice to a testing laboratory designated by the Secretary. The number of units of a basic model specified in a test notice shall not exceed 20.

(v) Within five working days of the time the units are selected, the manufacturer must ship the specified test units of a basic model to the designated testing laboratory.

(2) *Testing Laboratory.* Whenever the Department conducts enforcement testing at a designated laboratory in accordance with a test notice under this section, the resulting test data shall constitute official test data for that basic model. The Department will use such test data to make a determination of compliance or noncompliance.

(3) *Sampling.* The Secretary will base the determination of whether a manufacturer's basic model complies with the applicable energy conservation

standard on testing conducted in accordance with the applicable test procedures specified in this part, and with the following statistical sampling procedures for metal halide lamp ballasts, with the methods described in 10 CFR Part 431, Subpart S, Appendix C (Sampling Plan for Enforcement Testing).

(4) *Test unit selection.* For metal halide lamp ballasts, the following applies:

(i) The Department shall select a batch, a batch sample, and test units from the batch sample in accordance with the following provisions of this paragraph and the conditions specified in the test notice.

(ii) The batch may be subdivided by the Department using criteria specified in the test notice.

(iii) The Department will then randomly select a batch sample of up to 20 units from one or more subdivided groups within the batch. The manufacturer shall keep on hand all units in the batch sample until the basic model is determined to be in compliance or non-compliance.

(iv) The Department will randomly select individual test units comprising the test sample from the batch sample.

(v) All random selections shall be achieved by sequentially numbering all the units in a batch sample and then using a table of random numbers to select the units to be tested.

(5) *Test unit preparation.* (i) Before and during the testing, a test unit selected in accordance with paragraph (a)(4) of this section shall not be prepared, modified, or adjusted in any manner unless such preparation, modification, or adjustment is allowed by the applicable DOE test procedure. DOE will test each unit in accordance with the applicable test procedures.

(ii) No one may perform any quality control, testing, or assembly procedures on a test unit, or any parts and subassemblies thereof, that is not performed during the production and assembly of all other units included in the basic model.

(iii) A test unit shall be considered defective if it is inoperative. A test unit is also defective if it is found to be in noncompliance due to a manufacturing defect or due to failure of the unit to operate according to the manu-

facturer's design and operating instructions, and the manufacturer demonstrates by statistically valid means that, with respect to such defect or failure, the unit is not representative of the population of production units from which it is obtained. Defective units, including those damaged due to shipping or handling, must be reported immediately to DOE. The Department may authorize testing of an additional unit on a case-by-case basis.

(6) *Testing at manufacturer's option.* (i) If the Department determines a basic model to be in noncompliance with the applicable energy performance standard at the conclusion of its initial enforcement sampling plan testing, the manufacturer may request that the Department conduct additional testing of the basic model. Additional testing under this paragraph must be in accordance with the applicable test procedure, and for metal halide lamp ballasts, the applicable provisions in Appendix C to Subpart S to Part 431.

(ii) All units tested under this paragraph shall be selected and tested in accordance with paragraphs (a)(1)(v) and (a)(2) through (5) of this section.

(iii) The manufacturer shall bear the cost of all testing conducted under this paragraph.

(iv) The Department will advise the manufacturer of the method for selecting the additional units for testing under the sampling plan, the date and time at which testing is scheduled to begin, the date by which testing is scheduled to be completed, and the facility at which the testing will occur.

(v) The manufacturer shall cease distribution of the basic model tested under the provisions of this paragraph from the time the manufacturer elects to exercise the option provided in this paragraph until the basic model is determined to be in compliance. The Department may seek civil penalties for all units distributed during such period.

(vi) If the additional testing results in a determination of compliance, the Department will issue a notice of allowance to resume distribution.

(b) *Cessation of distribution of a basic model of commercial equipment other than electric motors.* (1) In the event the Department determines, in accordance

with enforcement provisions set forth in this subpart, that a model of covered equipment is noncompliant, or if a manufacturer or private labeler determines one of its models to be in non-compliance, the manufacturer or private labeler shall:

(i) Immediately cease distribution in commerce of all units of the basic model in question;

(ii) Give immediate written notification of the determination of non-compliance to all persons to whom the manufacturer has distributed units of the basic model manufactured since the date of the last determination of compliance; and

(iii) If requested by the Secretary, provide DOE, within 30 days of the request, records, reports and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of a basic model determined to be in noncompliance.

(2) The manufacturer may modify the noncompliant basic model in such manner as to make it comply with the applicable performance standard. The manufacturer or private labeler must treat such a modified basic model as a new basic model and certify it in accordance with the provisions of this subpart. In addition to satisfying all requirements of this subpart, the manufacturer must also maintain records that demonstrate that modifications have been made to all units of the new basic model before its distribution in commerce.

(3) If a manufacturer or private labeler has a basic model that is not properly certified in accordance with the requirements of this subpart, the Secretary may seek, among other remedies, injunctive action to prohibit distribution in commerce of the basic model.

[75 FR 10968, Mar. 9, 2010]

APPENDIX A TO SUBPART S OF PART 431—COMPLIANCE STATEMENT FOR METAL HALIDE LAMP BALLASTS

Equipment: Metal Halide Lamp Ballasts

Manufacturer's or Private Labeler's Name and Address:

[Company name] ("the company") submits this Compliance Statement under 10 CFR Part 431 (Energy Efficiency Program for Certain Commercial and Industrial Equipment) and Part A of the Energy Policy and Conservation Act (Pub. L. 94-163), and amendments thereto. I am signing this on behalf of and as a responsible official of the company. All basic models of metal halide lamp ballasts subject to energy conservation standards specified in 10 CFR Part 431 that this company manufactures comply with the applicable energy conservation standard(s). We have complied with the applicable testing requirements (prescribed in 10 CFR Part 431) in making this determination, and in determining the energy efficiency set forth in all Certification Reports submitted by or on behalf of this company. All information in such Certification Report(s) and in this Compliance Statement is true, accurate, and complete. The company pledges that all this information in any future Compliance Statement(s) and Certification Report(s) will meet these standards, and that the company will comply with the energy conservation requirements in 10 CFR Part 431 with regard to any new basic model it distributes in the future. The company is aware of the penalties associated with violations of the Act and the regulations thereunder, and is also aware of the provisions contained in 18 U.S.C. 1001, which prohibits knowingly making false statements to the Federal Government.

Name of Company Official: _____

Signature of Company Official: _____

Title: _____

Firm or Organization: _____

Date: _____

Name of Person to Contact for Further Information: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

Email: _____

Third-Party Representation (if applicable)

For certification reports prepared and submitted by a third-party organization under the provisions of 10 CFR Part 431, the company official who authorized said third-party representation is:

Name: _____

Title: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

Email: _____

The third-party organization authorized to act as representative:

Third-Party Organization: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

Email: _____